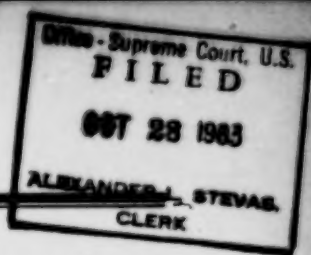


No. 83-541



IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

REPUBLIC INDUSTRIES, INC.,
v. *Petitioner,*
TEAMSTERS JOINT COUNCIL No. 83
OF VIRGINIA PENSION FUND,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

BRIEF *AMICUS CURIAE* FOR
THE PENSION BENEFIT GUARANTY CORPORATION

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**BRIEF AMICUS CURIAE FOR
THE PENSION BENEFIT GUARANTY CORPORATION**

1. The first Question Presented by the petition for certiorari in this case is identical to the constitutional issue before this Court in *Pension Benefit Guaranty Corporation v. R. A. Gray & Co.*, No. 83-245, and *Oregon-Washington Carpenters-Employers Pension Trust Fund v. R. A. Gray & Co.*, No. 83-291, as to which the Court noted probable jurisdiction on October 17, 1983.¹ 52

¹ The Pension Benefit Guaranty Corporation (the "PBGC") is filing this brief *amicus curiae* in its capacity as an agency of the

U.S.L.W. 3308 (U.S. Oct. 17, 1983). In light of the Court's order of October 17, it appears appropriate that the present petition be held on the Court's docket until the appeals in Nos. 83-245 and 83-291 are decided.²

2. The second Question Presented by the petition is a constitutional attack on the procedures for the assessment, collection, and adjudication of withdrawal liability under the Multiemployer Act (§§ 4219 and 4221 of ERISA, 29 U.S.C. §§ 1399 and 1401).³ Petitioner concedes, however, that "lower courts have uniformly rejected the argument that [the Multiemployer Act's] compulsory arbitration provision violates either the Due Process Clause or the Seventh Amendment." (Pet. 20). Since the courts have been unanimous on the constitutionality of these procedures,⁴ the procedural issues need not be resolved by this Court.

United States Government. Rule 36.4 of the Rules of this Court authorizes such filing, without the consent of the parties, for any "agency of the United States authorized by law to appear in its own behalf." The PBGC has such legal authority pursuant to Section 4002(b)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1302(b)(1).

² The PBGC suggested that the Court take the same action with regard to the petition for certiorari in No. 83-507.

³ The Multiemployer Pension Plan Amendments Act of 1980 (the "Multiemployer Act"), Pub. L. No. 96-364, 94 Stat. 1208 *et seq.*, 29 U.S.C. §§ 1381-1461 (Supp. V 1981).

⁴ See e.g., *Republic Industries, Inc. v. Teamsters Joint Council No. 83 of Virginia Pension Fund*, 4 Employee Benefits Cases ("EBC"), 2057, 2066-2069 (4th Cir. 1983); *Peick v. Pension Benefit Guaranty Corporation*, 539 F.Supp. 1025, 1061-1062 (N.D. Ill. 1982), argued, No. 82-2081 (7th Cir. April 13, 1983); *Washington Star Co. v. International Typographical Union Negotiated Pension Plan*, 4 EBC 1145, 1152-1153 (D. D.C. 1983), appeal docketed, No. 83-1313 (D.C. Cir. March 28, 1983); *Board of Trustees, Western Conference of Teamsters Pension Trust Fund v. J.N. Ceazan*, 559 F.Supp. 1210, 1217 (N.D. Calif. 1983), appeal docketed, No. 83-1905 (9th Cir. April 22, 1983); *Warner-Lambert Co. v. United Retail & Wholesale Employee's Teamsters Local 115 Pension Fund*, No. 82-

3. Moreover, petitioner seeks this Court's review of questions that may become moot after arbitration. Petitioner raised a statutory defense to liability in the proceedings below and admits it will owe no withdrawal liability if it prevails on that statutory defense. *Republic Industries, Inc. v. Teamsters Joint Council No. 83 of Virginia Pension Fund*, 3 EBC 2545, 2547 (E.D. Va. 1982); Pet. 8.⁵ Both the district court and the court of appeals correctly noted that this issue should be submitted to arbitration as required by statute.⁶ This Court should not precipitously consider constitutional issues which may become moot once the congressionally mandated (and court-approved) procedures are followed.

1080, slip op. at 8-17, 29-32 (E.D. Pa. August 10, 1983), *appeals docketed*, No. 83-1676 (3rd Cir. Sept. 12, 1983), No. 83-1682 (3rd Cir. Sept. 16, 1983).

⁵ The factual issue is whether two of petitioner's terminals constitute a single "facility" within the meaning of Section 4217(a) (2) of ERISA, 29 U.S.C. § 1397(a) (2). If they constitute two "facilities," Republic would owe no withdrawal liability by operation of Sections 4217(a) (2) and 4209 of ERISA, 29 U.S.C. §§ 1397(a) (2) and 1389.

⁶ As the district court noted, "[t]he court is unwilling, even if empowered to do so, which is doubtful, to bypass MPPAA's [the Multiemployer Act's] considered preference of this manner of dispute resolution." *Republic*, 3 EBC at 2547; the court of appeals stated, "[w]e have no doubt that the scheme of the 1980 Act is to require such a question to be decided by an arbitrator rather than a court." *Republic*, 4 EBC at 2062.

For the foregoing reasons, the petition for a writ of certiorari should be held on this Court's docket to await decision in Nos. 83-245 and 83-291, and to be decided in conformity with this Court's ruling in those cases.

Respectfully submitted,

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